IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.281 of 1992

Date of decision : August 16, 2007

Ravinder Nath **…Appellant.**

Versus

Kaka Ram and others **…Respondents.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Deepak Bhasin, Advocate.

For the Respondents : Mr. N.K. Thakur, Advocate.

Surjit Singh, Judge(Oral)

Respondents were prosecuted for offences under Sections 147, 148, 149, 323, 325 and 447 of the Indian Penal Code by the appellant for allegedly forming an unlawful assembly with the common object of dispossessing the appellant from land bearing Khasra No.434, measuring 1 Kanal 17 Marlas, situate in a village falling within the jurisdiction of Sub Division, Amb, and to prosecute that object, the respondents allegedly trespassed into the said land when the appellant and his brother Sat Pal were ploughing that land and assaulted them and caused injuries on different parts of their bodies.

2. Initially, the matter was reported by the appellant to the police vide report Ext.PW1/A on the very next day, but the police having not taken any positive action on that report, the complainant (appellant) approached the Court under Section 200 Cr. P.C. Trial Court summoned the respondents and charged them with the aforesaid

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Whether reporters of the local papers may be allowed to see the judgment?

offences. They pleaded not guilty. Therefore, they were put on trial and ultimately on the conclusion of the trial all of them were acquitted with the finding that the land, which the appellant and his brother Sat Pal were ploughing and on which they were sowing mustard crop, belonged to two of the respondents, namely Kaka Ram and Balwant Singh, who are related to each other as brothers.

3. We have heard the learned counsel for appellant and gone through the record. We see no reason to differ with the finding of the trial Court that the portion of the land on which the incident took place and which the respondents allegedly wanted to take forcible possession of, had in fact been in possession of the respondents themselves since 1962. The fact is admitted by PW-3 Sat Pal, the brother of the appellant. Parcha Jamindari Ext.D-1 also shows that a portion of Khasra No.434, shown by min No.434/1, to the extent of 13 Marlas, was in possession of the respondents.

4. Respondents took the plea that the appellant wanted to forcibly dispossess them from the portion of Khasra No.434 in their possession. The injuries, which were caused to the appellants, were simple in nature.

5. As per evidence of Dr. K.K. Sharma (PW-1), no doubt Sat Pal (PW-3) claimed that two of his teeth were broken as a result of fist blow given to him on his mouth, but there is no medico legal evidence to this effect. The doctor, who initially examined Sat Pal at the instance of the police after the report Ext.PW1/A was lodged, referred him to the dental surgeon on noticing an injury on the lower incisor. However, there is no evidence that Sat Pal got himself examined from the dental surgeon or the dental surgeon found that any tooth was broken, fractured or dislocated.

6. In view of the above stated position, it cannot be said that the force, which the respondents allegedly used, was excessive. Respondents, being in possession, had the right to defend their possession and in the course of so doing, to use reasonable force, in view of the provisions of Section 104 I.P.C.

7. For the fore-going reasons, we see no merit in the appeal. The same is, therefore, dismissed.

(Surjit Singh), J

August 16, 2007(ss) **(Surinder Singh), J**